Hong Leong Yamaha Motor Sdn Bhd v Ketua Pengarah Kastam, Jabatan Kastam Diraja Malaysia

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(A)-873–12 OF 2022
NANTHA BALAN, AZIMAH OMAR AND CHOO KAH SING JJCA
30 JANUARY 2024

Customs and Excise — Sales Tax — Exemption — Finance Minister gazetted Order ('Exemption Order') exempting local vehicle manufacturers from paying sales tax on imported parts used in manufacture of their vehicles — Director-General of Customs ('DG') ruled that Exemption Order only applied to manufacturers who produced 'taxable finished goods' — DG decided local motorcycle manufacturer could not avail of sales tax exemption because it produced 'non-taxable finished goods' — Whether Exemption Order had merely used the term 'finished goods' and DG had no authority or power to change or modify that term to mean either taxable or non-taxable finished goods

The appellant appealed against the High Court's dismissal of its consolidated judicial review application for an order to quash the respondent's decision to impose sales tax on motorcycle parts ('the parts') that the appellant had imported in order to make motorcycles below the 250cc engine capacity. The appellant had relied upon the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 ('the Exemption Order'), issued and gazetted by the Minister of Finance, to contend that it was exempted from paying sales tax on the parts between the period September 2018 and June 2019. For a manufacturer to qualify for the exemption, the Exemption Order required, inter alia, that the parts shall be used solely in the making of the manufacturer's 'finished goods'. The respondent ruled that the appellant could not avail of the Exemption Order because the term finished goods' therein meant 'finished taxable goods'. The respondent took the view that the appellant's motorcycles below 250cc engine capacity were 'non-taxable finished goods' to which the Exemption Order did not apply.

Held, unanimously allowing the appeal and the judicial review application and setting aside the High Court's decision:

(1) The term 'finished goods' in the Exemption Order could mean both non-taxable finished goods as well as finished taxable goods (see para 47).

(2) The term 'finished goods' used in the Exemption Order could not be limited to only mean 'finished taxable goods'. The High Court erred in holding that the respondent had power, when issuing the exemption

certificate to the appellant, to change or modify the term 'finished goods' to 'finished taxable goods'. Although the Exemption Order permitted the respondent to impose 'any other conditions' he deemed fit, that did not mean the respondent had power to add to or modify the words that were already used in the Exemption Order. The Exemption Order was gazetted and had been passed through proper legislation. Any change to the terms used in the Exemption Order had to be similarly done through proper legislation (see paras 28–30, 43 & 48).

(3) The term 'finished goods' in the Exemption Order was so clear and unambiguous that the court was duty-bound to apply the plain and literal meaning of the words used without the need to resort to the purposive approach of interpretation (see para 40).

[Bahasa Malaysia summary

Perayu merayu terhadap penolakan Mahkamah Tinggi permohonan semakan kehakiman pencantuman untuk satu perintah bagi membatalkan keputusan responden untuk mengenakan cukai jualan ke atas alat ganti motosikal ('alat ganti tersebut') yang diimport oleh perayu untuk membuat motosikal di bawah kapasiti enjin 250cc. Perayu telah bergantung kepada Perintah Cukai Jualan (Orang Yang Dikecualikan daripada Pembayaran Cukai) 2018 ('Perintah Pengecualian'), yang dikeluarkan dan diwartakan oleh Menteri Kewangan, untuk menegaskan bahawa ia dikecualikan daripada membayar cukai jualan ke atas alat ganti tersebut antara tempoh September 2018 dan Jun 2019. Untuk pengilang layak mendapat pengecualian, Perintah Pengecualian menghendaki, antara lain, bahawa alat ganti tersebut hendaklah digunakan semata-mata dalam pembuatan 'barang siap' pengeluar. Responden memutuskan bahawa perayu tidak dapat menggunakan Perintah Pengecualian kerana istilah barang siap' di dalamnya bermaksud 'barang siap bercukai'. Responden berpandangan bahawa motosikal perayu di bawah kapasiti enjin 250cc adalah 'barang siap tidak boleh cukai' yang mana Perintah Pengecualian tidak terpakai.

Diputuskan, sebulat suara membenarkan rayuan dan permohonan semakan kehakiman dan mengetepikan keputusan Mahkamah Tinggi:

(1) Istilah 'barang siap' dalam Perintah Pengecualian boleh bermaksud kedua-dua barang siap tidak bercukai dan juga barang siap bercukai (lihat perenggan 47).

(2) Istilah 'barang siap' yang digunakan dalam Perintah Pengecualian tidak boleh terhad kepada hanya bermaksud 'barang siap bercukai'. Mahkamah Tinggi terkhilaf apabila memutuskan bahawa responden mempunyai kuasa, apabila mengeluarkan sijil pengecualian kepada perayu, untuk menukar atau mengubah suai istilah 'barang siap' kepada 'barang siap bercukai'. Walaupun Perintah Pengecualian membenarkan

responden untuk mengenakan 'sebarang syarat lain' yang difikirkannya sesuai, itu tidak bermakna responden mempunyai kuasa untuk menambah atau mengubah suai perkataan yang telah digunakan dalam Perintah Pengecualian. Perintah Pengecualian telah diwartakan dan telah diluluskan melalui perundangan yang sepatutnya. Sebarang perubahan kepada terma yang digunakan dalam Perintah Pengecualian juga perlu dilakukan melalui perundangan yang betul (lihat perenggan 28–30, 43 & 48).

(3) Istilah 'barang siap' dalam Perintah Pengecualian adalah begitu jelas dan nyata sehingga mahkamah berkewajipan untuk menggunakan makna yang jelas dan literal bagi perkataan yang digunakan tanpa perlu menggunakan pendekatan tafsiran bertujuan (lihat perenggan 40).]

Cases referred to

Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors [1985] 2 MLJ 35; [1985] CLJ Rep 122, SC (refd)

Hong Leong Yamaha Motor Sdn Bhd v Ketua Pengarah Kastam, Jabatan Kastam Diraja Malaysia and other cases [2023] MLJU 106; [2023] 1 LNS 111, HC (refd)

Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano [1997] 1 MLJ 94, FC (refd)

National Land Finance Co-operative Society Ltdv Director General of Inland Revenue [1994] 1 MLJ 99; [1993] 4 CLJ 339, SC (refd)

Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & Anor Appeal [2005] 3 MLJ 97, FC (distd)

Legislation referred to

Interpretation Acts 1948 and 1967 s 17A
Palm Oil (Research Cess) Order 1979
Palm Oil Research and Development Act 1979
Sales Tax (Persons Exempted from Payment of Tax) Order 2018 Schedule A, items 35, 66, Schedule C, items 1, 5
Sales Tax Act 2018 ss 2, 8, 12, 12(1), 13, 13(1), 35(1)(b), (3)(a), 38, 38(1)

Appeal from: *Hong Leong Yamaha Motor Sdn Bhd v Ketua Pengarah Kastam, Jabatan Kastam Diraja Malaysia and other cases* [2023] MLJU 106 (High Court, Shah Alam)

S Saravana Kumar (with Yap Wen Hui) (Rosli Dahlan Saravana Partnership) for the appellant.

Liew Horng Bin (with Rahazlan Affandi Abdul Rahman and Noor Atiqah Zainal Abidin) (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Choo Kah Sing JCA:

INTRODUCTION

[1] The appellant, Hong Leong Yamaha Motor Sdn Bhd, was the applicant in three judicial review applications at the High Court. The three judicial review applications were consolidated on 28 February 2020. On 24 September 2020, the High Court granted the appellant leave to proceed with the consolidated judicial review application.

[2] The appellant in the consolidated judicial review application sought for an order of certiorari to quash the decisions of the Director General of Customs ('DG of Customs') who had decided to impose sales tax ('the impugned sales tax') on various motorcycle components ('the goods') which were imported and purchased by the appellant to be used in its manufacturing of motorcycles below the engine capacity of 250 cubic centimeters (or 250cc) ('the appellant's finished goods'). On 6 December 2022, after having heard the arguments of the substantive judicial review, the High Court dismissed the appellant's application. Dissatisfied with the High Court's decision, the appellant appealed before us.

THE SALIENT FACTS

[3] The three diagrams below depict the respective bills of demand issued by the DG of Customs and the respective taxable amounts which led to the appellant filing the three judicial review applications at the High Court to challenge the decisions of the DG of Customs:

No	Date	Bill of Demand Amount (RM)	High Court Judicial Review
1	30 September 2019	13,351.77	BA-25–112–10 of 2019 (JR 112)
2	30 September 2019	134.03	
3	30 September 2019	8,327.99	
4	30 September 2019	30,527.49	
5	30 September 2019	620,463.10	
6	30 September 2019	607,936.19	
7	30 September 2019	548,660.67	
8	30 September 2019	7,612,708.49	
9	30 September 2019	9,593,966.29	
10	30 September 2019	7,301,392.29	
	TOTAL:	26,337,468.31	

No	Date	Bill of Demand Amount (RM)	High Court Judicial Review
1	27 November 2019	31,366.87	BA-25–139–12 of 2019 (JR 139)
2	28 November 2019	19,174.06	
3	28 November 2019	20,363.63	
4	28 November 2019	5,240.04	
5	28 November 2019	89,993	
6	3 December 2019	10,924.72	
7	3 December 2019	35,621.06	
8	3 December 2019	9,487.80	
9	3 December 2019	22,794.95	
10	3 December 2019	15,501.61	
11	4 December 2019	157,002.28	
12	4 December 2019	273,238.73	
13	4 December 2019	120,614.30	
14	4 December 2019	620,438.75	
15	4 December 2019	178,505.64	
	TOTAL:	1,610,267.44	

No	Date	Amount (RM)	High Court Judicial Review
1	16 December 2019	2,963.51	BA-25–5–01 of 2020 (JR 5)
2	16 December 2019	8,103.92	
	TOTAL:	11,067.43	

[4] The DG of Customs relied on s 38 of the Sales Tax Act 2018 (Act 806) ('STA 2018') to issue the bills of demand. Section 38(1) of the STA 2018 states as follows:

> 38 Payment of sales tax, etc., short paid or erroneously refunded
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> (1) Where —
>
> (a) the whole or any part of any sales tax due and payable, surcharge accrued, or penalty, fee or other money payable, under this Act has not been paid by a person; or
>
> (b) the whole or any part of any sales tax due and payable, surcharge accrued, or penalty, fee or other money payable, after having been paid, has been erroneously refunded to a person,
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> the Director General shall demand from the person to pay the sales tax, surcharge, penalty, fee or other money, or the deficient sales tax, surcharge, penalty, fee or other money, or to repay the refund erroneously paid to him.

[5] The DG of Customs decided that there was sales tax due and payable by the appellant for the goods imported by the appellant during the period between September 2018 and June 2019. The DG of Customs opined that theSales Tax (Persons Exempted from Payment of Tax) Order 2018 (PU(A) 210/2018) ('the Exemption Order 2018'), which the appellant had relied on to be exempted from paying sales tax on the goods imported by the appellant, was not applicable.

[6] In the exercise of his powers conferred in s 35(1)(b) of the STA 2018, the Minister of Finance made the Exemption Order 2018. The Exemption Order 2018 has been in force since 1 September 2018.

[7] Paragraphs 2 and 3 of the Exemption Order 2018 state as follows:

> 2 Exemption from payment of sales tax
>
> (1) Subject to paragraph 3, the persons specified in column (2) of Schedule A, Schedule B and Schedule C are exempted from the payment of sales tax on the goods specified in column (3) of Schedule A, Schedule B and Schedule C subject to the conditions specified in column (4) of Schedule A, Schedule B and Schedule C.
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> (2) The persons specified in column (5) of Schedule A, Schedule B and Schedule C shall produce to the proper officer of sales tax or the registered manufacturer, as the case maybe, as provided in sub-subparagraphs 4(a)(i) and 4(a)(ii), a certificate in the form as determined by the Director General and signed by the specified persons
>
> 3 Extent of exemption
>
> The exemption referred to in paragraph 2 shall be granted in full in respect of the goods specified in column (3) of Schedule A, Schedule B and Schedule C unless otherwise provided in the conditions specified in column (4) of Schedule A, Schedule B and Schedule C.

[8] The relevant Schedule in the Exemption Order 2018 is Schedule C, particularly item No 1. It is instructive to note that item No 1 of Schedule C, particularly column (4) Conditions, was recently amended via the Sale Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2022 (PU(A) 380/2022) ('the Exemption (Amended) Order 2022') which came into force on 1 January 2023.

[9] Before column (4) of item No 1 of Schedule C was amended, the then column (4) of item No 1 of Schedule C read as follows:

JADUAL C/SCHEDULE C

(1) Item No	(2) Persons	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
1	Any registered manufacturer	Raw materials, components and packaging materials excluding petroleum	(a) That the goods are approved by the Director General; (b) that the goods are imported or purchased from another registered manufacturer or a warehouse licensed under section 65 of licensed manufacturing warehouse under 65A of the Customs Act 1967; (c) that the goods shall be used solely in the manufacturing of finished goods of the person mentioned in column (2); (d) that the person mentioned in column (2) shall pay the sales tax on any goods that cannot be accounted for; (e) any other conditions the Director General deem fit to impose.	Registered Manufacturer

[10] The appellant contended that the goods under column (3) of Schedule C that it had imported ought to be exempted from payment of sales tax because they were used in the manufacturing of finished goods of the appellant company. The appellant further contended that para (c) of column (4) Conditions stated clearly that 'the goods shall be used solely in the manufacturing of *finished goods* (Emphasis added.) of the person mentioned in column (2). It did not state the finished goods has to be finished taxable goods When the appellant applied for the sales tax exemption certificate for the goods it had imported, the Customs authority issued exemption certificate to the

appellant. However, the exemption certificate was issued subject to certain conditions one of the conditions ('Condition No 3) stated as follows:

> 3. The raw materials, components and packaging materials shall be used solely in the manufacturing of *finished taxable goods* of the registered manufacturer; (Emphasis added.)

[11] The DG of Customs contended that the appellant's finished goods, ie, motorcycles below 250cc, were non-taxable finished goods, as such the condition No 3 was not fulfilled. In this circumstance the DG of Customs submitted that the appellant's goods under column (3) of Schedule C were not qualified to claim exemption of sales tax.

[12] The position taken by the DG of Customs is that the exempted goods in column (3) of Schedule C were meant for goods intended to be used solely in the manufacturing of finished taxable goods, and were not meant for manufacturing of non-taxable finished goods.

THE DECISION OF THE HIGH COURT

[13] Before the High Court, one of the issues raised for determination, which is the crux of the appeal before us, was as follows:

> Whether the DG of Customs has any legal basis to impose additional condition by limiting the term 'finished goods' under the Sales Tax (Person Exempted from Payment of Tax) Order 2018 [or the Exemption Order 2018] to only referred to taxable finished goods.

[14] The reasons for the decision of the learned High Court judge are found in the following paragraphs of her judgment (reported as *Hong Leong Yamaha Motor Sdn Bhd v Ketua Pengarah Kastam, Jabatan Kastam Diraja Malaysia and other cases* [2023] MLJU 106; [2023] 1 LNS 111):

> [27] The argument put forth by the applicant is that the word 'taxable' before the words 'finished goods' does not appear in the Exemption Order (item 1 Schedule C). It was therefore argued that the finished goods were not taxable.
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> [28] Respectfully, this court cannot agree with this contention. In the considered view of this court, the Exemption Order must be read as a whole, including together with the Act from which it derived its powers from. Section 35 of the Act is the enabling provision of the Exemption Order, allowing the Minister to legislate the Exemption Order.
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> [29] In this regard, this court agrees with the argument by the learned Senior Federal Counsel who made reference to ss 2, 12 and 13 of the Act. Section 2 of the Act read together with s 12 of the Act, a 'registered manufacturer' is one who manufactures 'taxable goods' who is liable to be registered under s 13 of the same Act.

[30] In the considered view of this court, the applicant was well aware that the Exemption Order stated finished taxable goods In the even [sic] the goods were not taxable, there was no necessity for the applicant to register for tax exemption under the Act.

[31] Moreover, item 1 Schedule C allows the Director General to impose other conditions as the Director General deem [sic] fit. Therefore [sic] this court is satisfied this ground is without merit.

THE FINDINGS OF THIS COURT

[15] It can be distilled from para 29 of the learned High Court judge's judgment that since the appellant was engaged in manufacture of goods (as defined in s 2 of the STA 2018) and was liable to register with the DG of Customs as a registered manufacturer under ss 12 and 13 of the STA 2018, therefore, the 'finished goods' in para (c) of column (4) Condition in Schedule C must necessarily to mean to refer to finished taxable goods.

[16] Sections 12(1) and 13(1) of the STA 2018 state as follows:

12(1) The Minister may, by order published in the gazette, determine the *total sale value* of *taxable goods* for the purpose of registration of any manufacturer under this Part.

13(1) Any manufacturer who is liable to be registered under section 12 shall apply to the Director General for registration as registered manufacturer in the prescribed form not later than the last day of the month following the month in which he is liable to be registered as referred to in paragraph 12(2)(a) or (b).

[17] We observe that there are two qualifications for a manufacturer to be liable to be registered as a registered manufacturer under the STA 2018. First, the manufactured goods must be taxable goods Second, the total sale value of the taxable goods must have exceeded the amount of total sale value of taxable goods as determined by the Minister for such manufacturer to become liable to be registered.

[18] The first qualification for a manufacturer to be liable to register as a registered manufacturer under the STA 2018 is indeed that the finished goods must be taxable goods in nature. However, in the present case, the counsel for the DG of Customs admitted that the appellant is a registered manufacturer under the STA 2018, and yet, that the appellant's finished goods, ie, motorcycles below 250cc, are non-taxable finished goods.

[19] The High Court's reasoning vis a vis the fact that the appellant was a registered manufacturer, therefore, the finished goods in item 1 of column 4 Conditions of Schedule C must be referring to finished taxable goods could not justify as to why the appellant was liable to register as a registered manufacturer

when the appellant's finished goods were non- taxable finished goods. On this score, we are of the view that the learned High Court judge's reasoning is flawed.

[20] The appellant was registered under the STA 2018 because it had satisfied both the qualifications It is possible for a registered manufacturer to manufacture both taxable finished goods and non-taxable finished goods For this reason, it is legally comprehensible for the appellant to be registered as a registered manufacturer under the STA 2018, and to be also manufacturing non-taxable finished goods. Therefore, focusing on ss 12 and 13 of the STA 2018 as the reason for the appellant to be liable to pay the sales tax was not justifiable. The mere fact that the appellant is a registered manufacturer could not satisfactorily determine the question whether the term in para (c) of column (4) Conditions — '... finished goods ...' only referred to finished taxable goods.

[21] Para (c) of column 4 Conditions of Schedule C of the Exemption Order 2018 did not state 'finished taxable goods', it clearly stated 'finished goods'.

[22] The learned High Court judge presupposed the appellant to be fully aware that the 'finished goods' referred to in the Exemption Order 2018 referred to 'finished taxable goods', otherwise, the appellant would not have to register for tax exemption under the STA 2018. In our view, this presupposition is erroneous.

[23] In the first place, the certification of sales tax exemption under the Exemption Order 2018 was not for the finished goods. The certification of the sales tax exemption was for exemption of the sales tax with respect to the 'raw materials, components and packaging materials and manufacturing aids' which were imported and meant for the manufacture of the appellant's finished goods.

[24] All imported goods (be it finished goods, raw materials, components or packaging materials) are liable to payment of import tax, sales tax and/or any other taxes as prescribed by the law (see s 8 of the STA 2018) unless they have been exempted. In this instant case, the appellant paid the import tax and sought exemption to pay the sales tax. Therefore, the certification for exemption of sales tax was meant for the imported goods which were for the manufacture of finished goods. The certification for exemption of sales tax, therefore, would not necessarily lead to the conclusion that the finished goods must be finished taxable goods.

[25] The learned High Court judge in para 31 of the judgment opined that 'item 1 Schedule C' (presumably referring to para (e) of column (4) Condition)

allowed the DG of Customs to impose other conditions as the DG of Customs deemed fit. As such, condition No 3 was legally imposed by the DG of Customs in the exemption certificate.

[26] The diagram below depicts the different wording between the Exemption Order 2018 and the condition No 3 attached with the exemption certificate:

Exemption Order 2018 para (c) column (4) Condition	Condition No 3
that the goods shall be used solely in the manufacturing of finished goods of the person mentioned in column (2)	The raw materials, components and packaging materials shall be used solely in the manufacturing of finished taxable goods of the registered manufacturer

[27] The difference in the wording between the Exemption Order 2018 and the condition No 3 is printed in italic. The critical part difference is use of the terms 'finished goods' and 'finished taxable goods' (highlighted in bold) which is the crux of the contention in the appellant's appeal.

[28] We are of the considered view that the learned High Court judge erred in accepting that para (e) of column (4) Condition could empower the DG of Customs to have such vast power to change the wording in the Exemption Order 2018 by rewording them as in condition No 3.

[29] Para (e) of column (4) Conditions — states as follows:

> (e) any other conditions the Director General deem [sic] fit to impose.

[30] We are of the considered view that although the DG of Customs was permitted to impose any conditions, the conditions imposed must be other than those conditions which have already been stated in column (4) Conditions. It stated clearly 'any other conditions'. Hence, the DG of Custom has no power to add or remove word(s) in those conditions which have already been stated in column (4) Conditions in item No 1 of Schedule C. Schedule C was a *Gazette* Order and has been passed through proper legislation. If there is any change, it has to be done through proper legislation too.

[31] The DG of Customs could not impose an additional condition by limiting the meaning of the words 'finished goods' to mean 'finished taxable goods'. The former carries a very different connotation from the latter. 'Finished goods' means finished goods, be it taxable or non-taxable. The insertion of the word 'taxable' after the word 'finished' and before the word 'goods' brings a limited meaning to the original words of 'finished goods'.

Therefore, we could not agree with the learned High Court judge that the power granted to the DG of Customs could extend to changing the original words, or adding word(s) into the original words, in Schedule C. This prohibition is more so when the modification would lead to a substantial change of the meaning.

[32] If the drafters intended the words 'finished goods' to mean 'finished taxable goods' in item 1 of Schedule C, they could have done so like in other parts of the Schedules. The words 'finished taxable goods' were used in item 5 of Schedule C. The words 'taxable goods' were used in items 35 and 66 of Schedule A as illustration. It was held that 'Parliament does nothing in vain, the court must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded' (see *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35 at p 42; [1985] CLJ Rep 122 p 125, Supreme Court; see also *Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano* [1997] 1 MLJ 94, pp 100–101 (FC)).

[33] Going back to the issue for determination before the High Court, the counsel for the respondent submitted that the DG of Customs had the power under para (e) of column 4 Condition of Schedule C to exercise his power to impose additional condition by limiting the term 'finished goods' to only finished taxable goods, in other words, the counsel for the respondent had indirectly admitted that the word 'finished goods' could also mean non-taxable finished goods, otherwise, why would the DG of Customs exercise his power to impose an 'additional condition' by limiting the impugned term.

[34] On 15 October 2018, the Ministry of Finance issued a letter ('the MoF's letter') to the then DG of Customs Y Bhg Dato' Sri Subromaniam Tholasy to inform that the then Minister of Finance's decision in agreeing to approve exemption of sales tax to companies which held franchise for manufacturing vehicles locally for vehicle components that was imported or purchased from local registered manufacturer or licensed warehouse. The relevant part of the letter stated as follows:

> 2. Adalah dimaklumkan bahawa YB Menteri Kewangan selaras dengan peruntukan di bawah Seksyen 35(3)(a) Akta Cukai Jualan 2018 bersetuju meluluskan pengecualian cukai jualan kepada Syarikat pemegang francais kenderaan pemasangan tempatan atau mana-mana orang yang bertindak bagi pihak Syarikat pemegang francais tersebut ke atas komponen kenderaan yang diimport atau dibeli dari pengilang berdafatar tempatan atau Gudang berlesen di bawah Seksyen 65 atau Gudang Pengilangan Berlesen di bawah Seksyen 65A, Akta Kastam 1967, tertakluk kepada syarat berikut:

i) Syarikat yang diluluskan oleh MITI bagi permasangan kenderaan (Lampiran A), atau mana-mana orang yang bertindak bagi syarikat tersebut;

ii) Kompenen kenderaan yang dimport atau dibeli secara tempatan, tertakluk kepada syarat-syarat di Lampiran B;

iii) Komponen kenderaan dihantar ke kilang Syarikat pemasang kenderaan kontrak untuk digunakan secara langsung dalam proses pemasangan kenderaan; dan

iv) Tempoh pengecuailian berkuatkuasa satu tahun mulai 1 September 2018 hingga 31 August 2019.

3. Berhubung pengecualian cukai jualan di perenggan 2, Menteri Kewangan di bawah Seksyen 35(3)(c) Akta Cukai Jualan 2018 memberi kuasa kepada Ketua Pengarah Kastam untuk membuat pembayaran balik cukai jualan yang telah dibayar bermula pada 1 September 2018 hingga 2 minggu selepas Tarikh surat kelulusan ini.

4. Surat Kemeterian Kewangan rujukan (C)0.225/38(4) bertarikh 26 September 2018 adalah DIBATALKAN.

[35] The appellant was one of those approved franchise holders in 'Lampiran A' for the category of motorcycle. The appellant relied on this approval by the Ministry of Finance to seek exemption of payment of sales tax for the goods for the purpose of manufacture of its finished goods. The MoF's letter did not limit or specify the finished goods must be finished taxable goods.

[36] A right for exemption of paying sales tax for the goods imported was accorded by the Ministry of Finance for the period from 1 September 2018 to 31 August 2019. Therefore, this right could not be modified by the DG of Customs at his whim by qualifying the plain language used in the MoF's letter and the law. Notwithstanding that, even if there was a doubt or ambiguity, then such doubt or ambiguity 'must be construed in favour of the tax payer'. In *National Land Finance Co-operative Society Ltdv Director General of Inland Revenue* [1994] 1 MLJ 99 at p 106; [1993] 4 CLJ 339, pp 344–345, the then Supreme Court held as follows:

> There are ample authorities to show that courts have refused to adopt a construction of a taxing Act which would impose liability when doubt exists In *Re Micklewait* [1855] 11 Exch 452 it was held that a subject is not to be taxed without clear words. We realise that revenue from taxation is essential to enable Government to administer the country and that the courts should help in the collection of taxes whilst remaining fair to tax payers Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J in *Cape Brandy Syndicate v IRC*:
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> > ... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as

A to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used ...

It has also been said by the Judicial Committee in *Oriental Bank Corporation v Wright* [1880] 5 AC 842, 856 'that the intention to impose a charge upon a subject must be shown by clear and unambiguous language'.

B

[37] The counsel for the respondent submitted that the Minister (the Ministry of Finance), DG of Customs and relevant Customs Officer had deposed six affidavits to explain the reasons as to why the appellant was not C entitled to tax exemption under item 1 of Schedule C of the Exemption Order 2018. The counsel for the respondent also referred to and relied on para 5(4) of the Exemption Order 2018 that the Minister is the determining body to decide whether the appellant was liable to the sales tax imposed or otherwise. We could not agree with the respondent's counsel on the reliance of para 5(4) of the D Exemption Order 2018. Paragraph 5(4) of the Exemption Order 2018 states as follows:

(4) If any question arises as to whether any particular goods are or are not included in the class of goods subject to exemption, such question shall be decided by the Minister.

E

[38] The above paragraph refers to dispute over the class of goods subject to exemption in column (3) Goods Exempted of Schedule C, it does not deal with the meaning of 'finished goods' in column 4 Conditions of Schedule C. The F respondent's counsel has misconstrued the application of the said paragraph. Insofar as the goods sought for exemption of sales tax under column 3 Goods Exemption of Schedule C was concerned there was no dispute over whether they were or were not included in the class of goods for exemption. Hence, the explanation and deposition in those affidavits attempting to explain the G purpose and object of the Exemption Order 2018 that finished goods meant only finished taxable goods could not aid the court to interpret the words 'finished goods' in the manner as the DG of Customs intended them to be.

[39] In *Palm Oil Research and Development Board Malaysia & Anor* H *v Premium Vegetable Oils Sdn Bhd & Anor Appeal* [2005] 3 MLJ 97, p 108, the apex court decided that purposive approach to statutory interpretation applies to all statutes including taxing statues after the Interpretation (Amendment) Act 1997 (Act A996) came into effect on 25 July 1997 which inserted s 17A of the Interpretation Acts 1948/1967 which states:

I In the interpretation of a provision of An Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[40] Although the apex court has pronounced that purposive approach of statutory interpretation could extend to taxing law, when the impugned word(s) is clear and unambiguous, like in the present case — 'finished goods', then the court is duty bound to apply the plain and literal meaning of the words used in the Exemption Order 2018. This court need not rely on the purposive approach of interpretation such as in *Palm Oil Research and Development Board Malaysia*. In that case, the ultimate issue was whether or not the subsidiary legislation, ie, the Palm Oil (Research Cess) Order 1979, which provided for the levying and collection of cess by the appellant from palm oil millers in respect of both crude palm oil and crude palm kernel oil was ultra vires the parent Act — Palm Oil Research and Development Act 1979. In our present case, there is no such conflict between the parent Act (STA 2018) and the subsidiary legislation (the Exemption Order 2018).

[41] The Minister of Finance exercised his power under s 35(3)(a) of the STA 2018 to issue the MoF's letter, and s 35(3)(a) of the STA 2018 states as follows:

> (3) The Minister may, in any particular case and subject to such conditions as he deems fit —
>
> (a) Exempt any person or class of persons from payment of the whole or any part of the sales tax which may be charged and levied on any taxable goods manufactured or imported;

[42] From the MoF's letter, the conditions, as the Minister deemed fit to impose, did not qualify the exemption of sales tax for imported goods must be for manufacture of finished taxable goods. In other words, the MoF's letter could also cover exemption of sales tax for imported goods used for manufacture of non-taxable goods. The MoF's letter was issued specifically for the manufacturers of the automobile industry. Perhaps this was an incentive given to a specified group by the Government to promote the economy of the automobile industry in 2018.

[43] After having considered the plain language used in the Exemption Order 2018 and the exemption of sales tax accorded by the Minister in the MoF's letter, this court is convinced and satisfied that the words 'finished goods' in item No 1 para (c) in column 4 Condition of Schedule C could not be limited to only finished taxable goods.

[44] As alluded earlier, if the respondent's counsel concedes that the DG of Customs was exercising his power to impose additional condition (in condition No 3 of the Exemption Certificate) by limiting the finished goods to finished taxable goods, this simply proffers two things First, the meaning of the term 'finished goods' must include non-taxable finished goods in the first place,

otherwise, why would there be a need to impose additional condition to qualify or limit the meaning of 'finished goods' in the second place. Second, it is possible that the DG of Customs' action could have prompted the legislature to amend the Exemption Order 2018, particularly item 1 column 4 Conditions of Schedule C via the Exemption (Amended) Order 2022 (PU(A) 380/2022). The present para (c) of column 4 Conditions of Schedule C reads as follows:

(4) Conditions

(a) ...;

(b) ...;

(c) that the goods shall be used in the manufacturing of finished goods of —

(i) taxable goods; or

(ii) both taxable and exempted goods of the person mentioned in column (2);

(ca) ...;

(ca) ...;

(ca) ...;

(d) ...

[45] The present item 1 of Schedule C of the Exemption Order 2018 is clear in that the manufacture of finished goods has to be finished taxable goods or finished taxable goods but have been exempted from sales tax. The latter finished goods will enjoy zero sales tax. In the event before the amendment to para (c) of column (4) Conditions of Schedule C, the words 'finished goods' was meant to be finished taxable goods, then there is no reason for the legislature to make the amendment in 2022.

SUMMARY

[46] In the final analysis, this court finds that first, we could not agree with the learned High Court judge's reasoning because the emphasis on ss 2, 12 and 13 was incorrect and the approach adopted by Her Ladyship in coming to her decision lacked analysis of the law in order to determine whether the words 'finished goods' were limited to only finished taxable goods.

[47] Secondly, the words 'finished goods' in para (c) of column 4 Conditions of item 1 of Schedule C could mean both non-taxable finished goods as well as finished taxable goods. The words were clear, unambiguous, unqualified and plain enough to be given a literal interpretation. It is not necessary to apply the purposive approach of statutory interpretation because there is no ambiguity of the meaning and the application of the law.

[48] Thirdly, the ambiguity arose because of the DG of Customs' act of qualifying the impugned words by limiting them to mean only finished taxable goods. This court could not agree with the respondent's counsel that para (e) of column 4 Conditions of Schedule C could empower the DG of Customs to impose 'additional condition' (as per condition No 3 in the Exemption Certificate). Any condition imposed has to be other than the conditions already stated in column 4 Conditions of Schedule C. The DG of Customs could not add or change the words in Schedule C, neither could the DG of Customs impose additional conditions over the conditions which have already been stated. If there is any change to the wording of Schedule C, it has to be done by proper legislation, such as via the Exemption (Amended) Order 2022 (PU(A) 380/2022).

[49] Fourthly, the MoF's letter supports the appellant's contention in that the MoF's letter did not state that the manufacture goods have to be finished taxable goods. Although the Ministry later clarified (in a letter dated 8 May 2019) that it was for taxable finished goods, this could not change the fact that the words used in Schedule C were 'finished goods'.

[50] Finally, the amendment to the Exemption Order 2018 bolsters the contention that the meaning of the original wording in Schedule C column 4 Conditions was not limited to only finished taxable goods, otherwise, there was no necessity to amend the Schedule C in 2022.

CONCLUSION

[51] For the reasons as stated above, this court, in a unanimous decision, allows the appellant's appeal. This court orders that the reliefs sought in the appellant's notice of hearing of application for judicial review, particularly paras (1)(a) and (b) be allowed. This court further order that the order of the High Court dated 6 December 2022 be set aside. This court also order costs of RM20,000 to be paid by the respondent to the appellant.

Appeal and judicial review application allowed; High Court's decision set aside.

Reported by Ashok Kumar